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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,061	02/26/2004	Frantisek Eisinger	01762.010200	3296
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FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER RODRIGUEZ, JOSEPH C	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/786,061	Applicant(s) EISINGER, FRANTISEK	
	Examiner Joseph C. Rodriguez	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
     4a) Of the above claim(s) 6,9 and 11-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7,8 and 10 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/26/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to a classifier, classified in class 209, subclass 138.
- II. Claims 11-15, drawn to a method, classified in class 241, subclass 79.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). Here, the process can be practiced by materially different devices, such as the distinct embodiments claimed by Applicant described below.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Further, if group I is elected, this group contains claims directed to the following patentably distinct species of the claimed invention:

- I. Fig. 1-3, claims 1-5, 7, 8, 10
- II. Fig. 4, claims 6, 9

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Steve Warner on November 2, 2005 a provisional election was made with traverse to prosecute the invention of claims 1-5, 7,

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8 and 10. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 6, 9 and 11-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

#### ***Claim Objections***

Claims 2-5, 7, 8 and 10 are objected to because of the following informalities:

Claim 1 reads "A", thus the claims depending therefrom should read "The classifier".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 7-8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the other portion" (ln. 2 from end). There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Misaka et al. ("Misaka")(US 4,597,537).

Misaka teaches a classifier (Fig. 1-2) for separating coarse particles from a stream of gas and particles discharged from a vertical mill, the classifier comprising:

a generally cylindrical outer casing (12) having a vertical axis and a vertically oriented sidewall disposed on the mill (Fig. 1, near 20);

an inner casing (near 42) arranged within said outer casing, providing an annular passageway between said inner casing and said sidewall through which the stream of gas and particles flows upwardly (between 12 and 42),

a ring (Fig. 2, guide vanes 40; col. 3, ln. 64-col. 4, ln. 10 teaching adjustable guide vanes), supported about the axis, comprising a plurality of circumferentially-spaced static vanes forming angled ports for imparting rotational motion to the stream of gas and particles flowing through the ports for centrifugally separating a portion of coarse particles, thereby producing a remaining stream of gas and particles; and

a wheel (30) supported for rotation about the vertical axis, comprising a plurality of circumferentially-spaced generally cylindrically shaped, radially extending blades (80) for accelerating the rotational motion of the remaining stream for separating another

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portion of coarse particles, thereby producing a final stream of gas and particles to be discharged from the classifier (col. 4, ln. 11-col. 5, ln. 23 teaching that vanes create separating vortex that is *enhanced* by the wheel),

wherein the portion of coarse particles and the other portion of coarse particles are discharged from the classifier through an outlet (56, 58) for separated particles (col. 4, ln. 11-col. 5, ln. 23). Here, the input ports (best shown in fig. 2) extend in both the vertical and horizontal direction.

Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Piepho et al. ("Piepho")(US 5,884,776).

Piepho teaches a classifier (Fig. 1-3) for separating coarse particles from a stream of gas and particles discharged from a vertical mill, the classifier comprising:

a generally cylindrical outer casing (12) having a vertical axis and a vertically oriented sidewall disposed on the mill (Fig. 1; col. 2, ln. 29-42);

an inner casing (structure around 11) arranged within said outer casing, providing an annular passageway between said inner casing and said sidewall through which the stream of gas and particles flows upwardly (between 11 and 12),

a ring (top of 11 shown as supported between said outer casing and said inner casing), supported about the axis, comprising a plurality of circumferentially-spaced static vanes forming angled ports for imparting rotational motion to the stream of gas and particles flowing through the ports for centrifugally separating a portion of coarse particles, thereby producing a remaining stream of gas and particles; and

a wheel (Fig. 2) supported for rotation about the vertical axis, comprising a plurality of circumferentially-spaced generally cylindrically shaped, radially extending blades (62) for accelerating the rotational motion of the remaining stream for separating another portion of coarse particles, thereby producing a final stream of gas and particles to be discharged from the classifier (col. 2, ln. 29-col. 3, ln. 6),

wherein the portion of coarse particles and the other portion of coarse particles are discharged from the classifier through an outlet (70) for separated particles (col. 2, ln. 43-60). Here, it is noted that the vanes appearing at the top of the classifier chamber (Fig. 1) can be regarded as angled in relation to the wheel blades and, further, even zero can be regarded as an angle. Further, the input ports can be regarded as both vertically and horizontally extending because of the rectangular vane structure.

### ***Allowable Subject Matter***

Claims 5 and 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-6942** (M-F, 9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's **UNOFFICIAL Personal fax number** is **571-273-6942**.

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only. For more information about the PAIR system, see

<http://pair-direct.uspto.gov>

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

Alternatively, inquiries of a general nature or relating to the status of this application or proceeding can also be directed to the **Receptionist** whose telephone number is **571-272-6584**. Further, the supervisor's contact information is Donald Walsh, 571-272-6944.

Signed by Examiner Joseph Rodriguez

Jcr

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November 2, 2005